THE HON'BLE MR JUSTICE C.Y.SOMAYAJULU

On Monday, the thirtieth day of January,

two thousand and six .

W.P.No.17966 of 1996

Toddy Tappers Cooperative Society, Tandur village and Mandal, Adilabad District through its President, D.Lakshman Goud.

....Petitioner.

And:

The Assistant Commissioner, Excise &

Prohibition, Adilabad and others.

.....Respondents.

O R D E R:

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On 12.4.1996, the Sub Inspector of Police, Tandur, on information that the petitioner society is vending toddy by mixing foreign ingredients, which are harmful to the life of consumers, raided the shop No.4 belonging to the petitioner and seized two boxes of toddy under a cover of Panchanama and registered a case in Cr.No.19 of 1996.

2) This petition is filed for a declaration that the action of the 3rd respondent in drawing samples from the shop No.4 of the petitioner is arbitrary and illegal.

3) The contention of the learned counsel for the petitioner is that since the 3rd respondent is not empowered to draw samples its premises, action of the 3rd respondent in drawing samples is wholly violative of the provisions of the Excise Act and Rules made there-under and so the F.I.R., is liable to be quashed. He placed strong reliance on **Toddy Co-operative Society, Toddy Group of Mahabubnagar District Vs. The Principal Secretary, Revenue(Excise), Government of A.P.Hyderabad[1],** where it is held that there is no statutory provision or rule empowering the police to draw samples from toddy shops.

4) The contention of the learned Assistant Government Pleader is that since the F.I.R. is registered under Section 272 IPC and Section 37 of A.P. Excise Act, even assuming that the ratio in the decision relied on by the learned counsel for the petitioner, is applicable to the facts of this case, since police do have power to register a case under Section 272 IPC, question of quashing F.I.R. does not arise.

5) As rightly contended by the learned Assistant Government Pleader even assuming registration of the offence under Section 37 of Excise Act is improper the F.I.R. cannot be quashed inasmuch as 3rd respondent is competent to register a case under Section 272 I.P.C. In view thereof, question if the police has the power or authority to file charge sheet under Section 37 Excise Act or not, can be decided at the appropriate stage. If and when charge sheet is filed, then petitioner is at liberty to seek the remedy available to him. With the above observation, the writ petition is dismissed. No costs.

JUSTICE C.Y.SOMAYAJULU

30th January 2006.

BCS